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clause requiring compliance with this part.

(c) This part also covers any contract the Department awards directly to retained legal counsel exceeding \$100,000.

§719.4 Are law firms that are retained by contract by the Department covered by this part?

Legal counsel retained under fixed rate or other type of contract or other agreement by the Department to provide legal services must comply with the following if the legal costs over the life of the matter for which counsel has been retained are expected by the Department to exceed \$100,000 and retained legal counsel are so notified by the Department:

(a) Requirements related to Staffing and Resource Plans in subpart B of this part;

(b) Cost guidelines in subpart E of this part; and

(c) Engagement letter requirements in subpart C of this part if the retained legal counsel subcontracts legal work valued at \$25,000 or more (e.g., a law firm retained by the Department subcontracts with another law firm to provide \$26,000 in discovery-related legal work).

§719.5 What contracts are not covered by this part?

This part does not cover any contract under which the Department is not responsible for directly reimbursing the contractor for legal costs, such as fixed price contracts.

§719.6 Are there any types of legal matters not included in the coverage of this part?

Legal matters not covered by this part include:

(a) Matters handled by counsel retained by an insurance carrier, except under retrospective insurance in accordance with §719.45;

(b) Routine intellectual property law support services; and

(c) Routine workers and unemployment compensation matters.

§719.7 Is there a procedure for exceptions or deviations from this part?

(a) Requests for exceptions or deviations from this part must be made in writing to Department Counsel and ap-

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proved by the General Counsel. If an alternate procedure is proposed for compliance with an individual requirement in this part, that procedure must be included in the written request by the contractor. The General Counsel or his/her delegee shall provide a written response to such requests; however the response shall not require a justification of the Department's exercise of its discretion.

(b) The General Counsel may authorize exceptions or deviations requested under paragraph (a) of this section. The General Counsel may also establish exceptions to this part based on current field office and contractor practices that satisfy the purpose of these requirements.

(c) Exceptions to this part that are also a deviation from the Department of Energy Acquisition Regulation (DEAR) cost principles (see subpart D of this part) must be approved in accordance with applicable DOE procurement policy. See, e.g., DOE Acquisition Guide chapter 1.1, requiring approval by the Senior Procurement Executive of DOE or NNSA as applicable. In any event, the written request from a contractor for a deviation from a cost principle relating to this part must be submitted to the contracting officer, with a copy provided to Department Counsel.

§719.8 Does the provision of protected documents from the contractor to the Department constitute a waiver of privilege?

Contractors are required to provide detailed information about third-party claims and litigation to the Department. The Department and its contractors typically share common legal and strategic interests relating to pending or threatened litigation. The common interest between the parties is primarily rooted in the fact that the Department reimburses contractors for allowable costs incurred when litigation is threatened or initiated against contractors. However, other sources of the common interest between the Department and its contractors may include, but are not limited to, an interest in completion of the agency's important mission work and an interest in safe and efficient operation of the

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Department's facilities. To the extent documents associated with compliance with this part (e.g., Staffing and Resource Plans, invoices, engagement letters, settlement authority requests, and draft pleadings) are protected from disclosure to third parties because the items constitute attorney work product and/or involve attorney client communications, the contractor's provision of these items to the Department does not constitute a waiver of privilege. As long as the Department and the contractor share a common interest in the outcome of legal matters, this mutual legal interest permits the parties to share privileged material without waiving any applicable privilege.

Subpart B—Legal Management Plan, Staffing and Resource Plan and Annual Legal Budget

§719.10 Who must submit a Legal Management Plan?

Contractors who are parties to contracts identified under §719.3(a) and (b) must submit a Legal Management Plan.

§719.11 When must a Legal Management Plan be submitted or revised?

(a) Contractors must submit a Legal Management Plan to Department Counsel within 60 days following award of the contract. The deadline for submitting the Legal Management Plan may be extended by Department Counsel.

(b) Contractors must submit a revised Legal Management Plan upon request of Department Counsel within 60 days of receipt of the Department Counsel's request. The request for a revised Legal Management Plan shall include an explanation of the request. The deadline for submitting the Legal Management Plan may be extended by the Department Counsel.

§719.12 What information must be included in the Legal Management Plan?

The Legal Management Plan must include the following items:

(a) A description of the contractor's in-house counsel resources at the time

the Legal Management Plan is submitted, including areas of expertise and an explanation of the types of matters expected to be handled in-house.

(b) A description of the legal matters that may necessitate engagement of retained legal counsel.

(c) A description of the factors the contractor will consider in determining whether to handle a particular matter utilizing retained legal counsel.

(d) An outline of the factors the contractor must consider in selecting retained legal counsel, including:

- (1) Cost;
- (2) Past performance of previously retained counsel;
- (3) Particular expertise in a specific area of the law;
- (4) Familiarity with the Department's activity at the particular site and the prevalent issues associated with facility history and current operations;
- (5) Location of retained legal counsel relative to:

- (i) The site involved in the matter,
- (ii) Any forum in which the matter will be processed, and
- (iii) The location where a significant portion of the work will be performed;
- (6) Experience as an advocate in alternative dispute resolution procedures such as mediation;
- (7) Actual or potential conflicts of interest; and
- (8) The means and rate of compensation (e.g., hourly billing, fixed fee, blended fees).

(e) A description of the system that the contractor will use to review each matter in litigation to determine whether and when alternative dispute resolution is appropriate.

(f) A description of the role of in-house counsel in cost management.

(g) A description of the contractor's process for review and approval of invoices for legal costs.

(h) A description of the contractor's strategy for interaction with, and supervision of, retained legal counsel.

(i) A description of the procedures the contractor will employ in order to seek timely approval from Department Counsel to settle any legal matters as required by §719.34 of this part;